



TOMPKINS COUNTY **Office of Human Rights**

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T O M P K I N S C O U N T Y
Anti-Discrimination Law

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30 June 2015

Subdivision C: Arrest and Prior Conviction Discrimination in Employment

Section ##. Scope.

- (a) Discriminatory practices as defined in this subdivision are contrary to the public peace, health, safety, and general welfare and are prohibited by the County in the exercise of its police power.
- (b) Unless the context otherwise requires, "discriminatory practice" includes "arrest record and/or prior conviction discrimination."
- (c) Categories of protection provided under this subdivision include a person's arrest and conviction record.

Section ##. Definitions.

- (a) "Applicant" means any person considered or who requests to be considered for employment or internship by an employer, vendor, or contractor.
- (b) "Employer" means any person who employs four or more individuals in the County, either for compensation or as a volunteer. Employer includes a person who recruits an individual in the County to apply for employment in the County or elsewhere.
- (c) "Employment" means any work for pay or for internship status, including temporary or seasonal work, contracted work, contingent work, and work through the services of a temporary, job placement, referral, or other employment agency, for any work or position for which the primary place of work is located within Tompkins County. "Employment" shall not, for the purposes of this subdivision, include employment by any government law enforcement agency or any position classified as a "police officer" or "peace officer" pursuant to New York State Criminal Procedure Law (CPL).

- (d) "Interview" means any direct contact by the employer with the applicant, whether in person or by telephone, to discuss the employment being sought or the applicant's qualifications.
- (e) "Prior conviction" means entry of a plea of guilty, or a verdict of guilty, for a misdemeanor or felony offense in this state or any other jurisdiction.
- (f) "Vendor" means any vendor, contractor, or supplier of goods or services to Tompkins County, including vendors located outside Tompkins County limits.

Section ##. Discriminatory Practices.

- (a) It shall be an unlawful discriminatory practice under this subdivision for any employer, including the County and any political subdivision thereof, to deny any license, employment, or internship to any individual by reason of his or her having been convicted of one or more criminal offenses, or by reason of a finding of a lack of "good moral character" which is based upon his or her having been convicted of one or more criminal offenses, when such denial is in violation of the provisions of Article 23-A of the New York State Correction Law. Further, there shall be a rebuttable presumption in favor of excluding from evidence the prior incarceration or conviction of any person, in a case alleging that the employer has been negligent in hiring or retaining an applicant, employee, or intern, or supervising a hiring manager, if after learning about an applicant or employee's past criminal conviction history, such employer has evaluated the factors set forth in CPL Section 752, and made a reasonable, good faith determination that such factors militate in favor of hire or retention of that applicant, employee, or intern.
- (b) It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any employer, including the County and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in CPL Section 160.50, or by a youthful offender adjudication, as defined in CPL Section 720.35, or by a conviction for a violation sealed pursuant to CPL Section 160.55, or by a conviction which is sealed pursuant to CPL Section 160.58, in connection with the licensing, employment or providing of credit or insurance to such individual; provided, further, that no person shall be required to divulge information pertaining to any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in CPL Section 160.50, or by a youthful offender adjudication, as defined in CPL Section 720.35, or by a conviction for a violation sealed pursuant to CPL Section 160.55, or by a conviction which is sealed pursuant to CPL Section 160.58.

- (c) It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, employer, agency, bureau, corporation or association located in Tompkins County, including the County, its vendors, and any political subdivision thereof, to make any inquiry regarding or pertaining to an applicant's prior criminal conviction on any initial employment application. Consideration of an applicant's prior criminal conviction(s) shall take place only after an employment application is submitted and after any initial employment interview.
- (d) It shall be an unlawful discriminatory practice under this division for an employer, licensing agency, employment agency or labor organization to print, circulate, publish, display, or cause to be printed, circulated, published, or displayed any notice or advertisement indicating any limitation based on arrest or conviction record relating to:
 - (A) Employment by an employer;
 - (B) Membership in or any classification or referral for employment by a labor organization; or
 - (C) Any classification or referral for employment by an employment agency.
 - (D) This subsection does not prohibit a notice or advertisement from indicating a preference for applicants based on prior conviction record.

Section ##. Prior Conviction Screening Standards.

- (a) It shall be an unlawful discriminatory practice for the County, its vendors, and any employer located within County limits to make any inquiry regarding, or to require any person to disclose or reveal, any criminal conviction during the application process. The "application process" shall be deemed to begin when the applicant inquires about the employment sought and shall end when an employer has conducted an initial employment interview or made a conditional offer of employment.
- (b) If an employer does not conduct an interview, that employer must inform the applicant whether a criminal background check will be conducted before employment is to begin.
- (c) Any employer hiring for licensed trades or professions, including positions such as interns and apprentices for such licensed positions, may make an inquiry of applicants about prior criminal convictions if such inquiry is required by a licensing authority or by New York State or federal law.
- (d) Any employer hiring for positions where certain convictions are a bar to employment in that position under New York State or federal law shall not be prohibited from making inquiries about those convictions during the application process.

- (e) Any employer shall comply with Article 23-A of the New York State Correction Law and the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., when considering an applicant's prior criminal convictions in determining suitability for employment. In accordance with Article 23-A, nothing in this subdivision shall be construed to limit an employer's authority to withdraw conditional offers of employment for any lawful reason, including the determination that the candidate has a conviction that bears a direct relationship to the duties and responsibilities of the position sought, or that hiring would pose an unreasonable risk to property or to the safety of individuals or the general public.
- (f) In compliance with Executive Law Section 296, Subdivision 16 (NYS Human Rights Law), and the Family Court Act, employers are prohibited from asking at any time for applicants to disclose information about any arrest that resulted in a youthful offender adjudication pursuant to CPL Section 720.35; any arrest that was processed as a juvenile delinquency proceeding in Family Court; any arrest that resulted in a sealing pursuant to CPL Sections 160.50 or 160.55; any conviction that was sealed pursuant to CPL Section 160.58, unless said inquiry is specifically required or permitted by New York State or federal law.

Sec. ##. Exemptions.

- (a) The prohibitions of this subdivision shall not apply if the inquiries prohibited herein are specifically authorized by any other applicable law.
- (b) The provisions of this subdivision shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms, and other deadly weapons or in relation to an application for employment as a "police officer" or "peace officer" as those terms are defined in CPL Sections 1.20 or 2.10; provided further that the provisions of this subdivision shall not apply to an application for employment or membership in any law enforcement agency with respect to any arrest or criminal accusation which was followed by a youthful offender adjudication, as defined in CPL Section 720.35, or by a conviction for a violation sealed pursuant to CPL Section 160.55, or by a conviction which is sealed pursuant to CPL Section 160.58.

Sec. ##. Enforcement.

- (a) Any person aggrieved by a violation of this subdivision may commence a civil action or proceeding for injunctive relief, damages, or other appropriate relief in law or equity against any person or employer who violates this subdivision. In any such action or proceeding, the court may allow the party commencing such action or proceeding, if such party prevails, costs and reasonable attorney's fees as part of the relief granted.
- (b) Any action brought for violation of this subdivision must be commenced within one year after the alleged violation.

- (c) The remedies provided herein shall be separate and distinct from remedies provided in other laws, rules or regulations and shall not be construed by any court to be a prerequisite to an action or proceeding commenced pursuant to such other laws, rules or regulations. The provisions of this subdivision shall not be construed to diminish the rights of an applicant under any other law.
- (d) The County Attorney may, in his or her discretion, bring an action to restrain or prevent any violation of this subdivision or any continuance of any such violation, in any court of competent jurisdiction, and may further seek the imposition of the following penalties or a combination thereof:
 - (1) A penalty of \$500 for the first violation of this subdivision;
 - (2) A penalty of \$1,000 for each subsequent violation of this subdivision.